

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

JULIUS ANDREWS

PETITIONER

v.

NO. 2:08CV00009 WRW/HDY

T.C. OUTLAW, Warden,
FCI Forrest City, Arkansas

RESPONDENT

FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following findings and recommendation have been sent to United States District Judge William R. Wilson, Jr. Any party may serve and file written objections to these findings and recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the Office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendation. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, Arkansas 72201-3325

DISPOSITION

The record reflects that the proceeding at bar was initially designated as a civil rights action and that petitioner Julius Andrews ("Andrews") was given permission to proceed in forma pauperis. That designation was subsequently changed when it was determined that this proceeding is more in the nature of a habeas corpus proceeding. United States District Judge William R. Wilson, Jr., withdrew the previously granted permission to proceed in forma pauperis and gave Andrews fifteen days from April 7, 2008, to either pay the five dollar filing fee or submit a properly completed application to proceed in forma pauperis. See Document 20. That deadline came and went without Andrews either paying the five dollar filing fee or submitting a properly completed application to proceed in forma pauperis. The undersigned notified Andrews of his failure to comply with Judge Wilson's order but nevertheless gave Andrews an additional period of time within which to comply with Judge Wilson's order. Specifically, Andrews was given up to, and including, May 27, 2008, to either pay the five dollar filing fee or submit a properly completed application to proceed in forma pauperis. See Document 33. He was specifically warned that in the event he failed to comply with the May 27, 2008, deadline, his petition might be dismissed for failure to prosecute. May 27, 2008, has now come and gone, and Andrews has neither paid the five dollar filing fee nor submitted a properly completed application to proceed in forma pauperis.

Andrews has failed to comply with two deadlines, both of which were established for the purpose of moving this proceeding along. The undersigned therefore recommends that Andrews' petition, and this proceeding, be dismissed without prejudice for his failure to prosecute.

DATED this 2 day of June, 2008.



UNITED STATES MAGISTRATE JUDGE